



# STATE OF INDIANA

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October 29, 2012

Gary A. Robinson  
595 Sugar Street  
Marengo, Indiana 47140

*Re: Formal Complaint 12-FC-297; Alleged Violation of the Open Door Law by  
the Leavenworth Town Council*

Dear Mr. Robinson:

This advisory opinion is in response to your formal complaint alleging the Leavenworth Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Council President R. Whitney Timberlake responded in writing to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on September 10, 2012, a public hearing and the regular monthly meeting of the Council was scheduled to be held. You provide that Councilman David Schotter was unable to attend. As a result, you allege that Council President Timberlake contacted Councilman John Lahue by telephone and informed him that since "they did not get along, nothing would be accomplished", thus the meeting was cancelled. You allege that since cancelling a meeting is a final decision, the decision should have been made in an open public meeting, and the Council violated the ODL when it acted in such fashion.

You further allege that Council President Timberlake and Councilman Schotter are making final decisions by phone or in private meetings regarding claims approval, writing checks, and prospect approval in violation of the ODL. Lastly, when special meetings of the Council are held, the media is not being informed forty-eight hours in advance as required by statute.

In response to your formal complaint, Council President Timberlake advised that the September 10, 2012 meeting was cancelled as the Clerk-Treasurer and a Councilman were unable to attend. Council President Timberlake consulted with the town's attorney, who informed him that it was okay to cancel the meeting. Council President Timberlake denies telling Councilman Lahue that the meeting was not being held since the two did not get along. Council President Timberlake further denies that he and Councilman

Schotter are making final decisions in private meetings. Lastly, no media outlet has requested notification pursuant to I.C. § 5-14-1.5-5(b)(2), as such the Council does not have a responsibility to specifically inform the media forty-eight hours prior to any meeting.

## ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). While the ODL requires that all final action must be taken at a meeting open to the public, the ODL does not provide instruction as to what actions of a governing body require a meeting and/or vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-114*. Further, the ODL is silent as to any requirement that a governing body must follow in cancelling a meeting. As applicable here, Council President Timberlake advised that he cancelled the meeting upon being notified that the Clerk-Treasurer and a Councilman Schotter were unable to attend. As long as Council President Timberlake retained authority to cancel the meeting without first conducting a vote of the Council, it is my opinion that the Council did not violate the ODL. I would also note that if the absence of Councilman Schotter at the September 10, 2012 prevented the Council from having a majority of its members present, a meeting as defined under the ODL would have not been able to be convened regardless of any action taken by Council President Timberlake.

Council President Timberlake has denied your allegation that he and Councilman Schotter are making final decisions in private meeting or via telephone. As provided *supra*, a meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If President Mr. Timberlake and Councilman Schotter are not taking final action in private meetings, then the Council has not violated the ODL.

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing, requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). You allege that the Board has failed to provide the media notice of its special meetings. In response, President Timberlake advised that the Council has not received a request from any media outlet with being provided notice pursuant to I.C. § 5-14-1.5-5(b)(2). As a member of the media is required to submit a request for notification pursuant to I.C. § 5-14-1.5-5(b)(2) prior to December 31 for the succeeding calendar year, the Council would not be in violation of the ODL by failing to provide such notice to those media outlets who failed to submit a written request prior to December 31, 2011.

### CONCLUSION

It is my opinion that the Council did not violate the ODL as long as Council President Timberlake retained authority to cancel the meeting without first conducting a vote of the Council. Further, it is my opinion if Council President Timberlake and Councilman Schotter are not taking final action in private meetings or via telephone, then the Council is not acting contrary to the ODL. As to all other issues, it is my opinion that the Council did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Mr. R. Whitney Timberlake